REMARKS

In response to the above-referenced Final Office Action, Applicant seeks reconsideration of the application. In this response, Applicant has amended Claims 2-4. Applicant has not canceled any claims or added new claims. According, Claims 1-22 is pending.

I. Claims Rejected Under 35 U.S.C. § 103

The Examiner has rejected Claims 1-22 under 35 U.S.C. § 103(a) as being unpatentable over Vuppala et al., Layer-3 Switching Virtual Network Port: An Inter-Network Switching Framework ("Vuppala"), in view of Virtual Trunking and Traffic Shaping on BPX 8600 Series (Cisco Systems white paper) ("Virtual Trunking"). Applicant respectfully disagrees with this rejection.

To establish a *prima facie* case of obviousness, the Examiner must show the cited references, combined, teach or suggest each of the limitation of a claim.

With respect to Claim 1, Claim 1 claims an apparatus comprising a flow manager; *a remote logical port model to model a remote physical port*; and a trunk scheduler to schedule transmission units direct to the remote physical port.

The Examiner evidently admits that Vuppala fails to teach or suggest a remote logical port (RLP) model to model a remote physical port as claimed in Claim 1 and therefore relies only on Virtual Trunking for the teaching. Applicant respectfully disagrees that Virtual Trunking teaches or suggests this limitation. According to the Examiner, in Fig. 6, page 7, lines 1-15, "using one single physical port, customers need the ability to 'logically bundle' their network trunks" teaches a remote logical port (RLP) model to model a remote physical port (RPP). However, after careful review of the cited section, Applicant is unable to find any teaching or suggestion of the above quote referenced by the Examiner.

After additional search of the entire Virtual Trunking by Applicant, Applicant has finally located the specific quote recited by the Examiner on page 1, line 4. Applicant respectfully

disagrees that, "using one single physical port, customers need the ability to 'logically bundle' their network trunks" teaches, suggests, or includes a remote logical port (RLP) model to model a remote physical port (RPP). First, the absence of a remote logical port model is clear. Second, a single physical port does not teach or suggest a remote physical port. Third, the ability to "logically bundle" the network trunks does not teach or suggest modeling of a remote physical port. Fourth, "logically bundle" the network *trunks* does not teach or suggest remote logical *port* model. In view of the totality of the reference, it does not teach or suggest a remote logical port (RLP) model to model a remote physical port. Therefore, reconsideration and withdrawal of the anticipation rejection of Claim 1 are respectfully requested.

With respect to dependent Claims 2-4, as amended, according to the Examiner, a flow parameter database is characterized to be a topology database. Applicant respectfully disagrees with such characterization and submits that Vuppala does not teach or suggest at least a flow parameter database. The definition of topology is understood by one having ordinary skill of the art and is commonly available in the prior art such as *Data Networks, by Dimitri Bertsekas & Robert Gallager, Second Edition, 1992, page 418.* In this reference, it recites that the term network topology is synonymous with the list of nodes and links of the network together with the status of each link. Assuming that a topology database is a database containing the list of nodes and links, and the status of each link, the information contained in the topology database most certainly does not provide for flow parameters that describe the characteristics of the flows.

Claim 5 in the Office Action is believed to be Claim 6 as originally filed and the Examiner's rejection of Claim 5 appears to apply to Claim 6. Applicant has tracked the language of the claims rather than following what is indicated in the action. According to the Examiner, the topology database recited on page 648, lines 3-4 teaches the RLP data structure to hold data indicating characteristics of the RPP. However, the Examiner has **previously cited** this reference and asserted that the topology database teaches flow parameter database. Applicant is mystified as to how one single element from the same reference is able to teach two distinct claim elements. Applicant directs the Examiner's attention to Claims 2-4 where the claims recite "a flow parameter

database" and the Examiner's Office Action in rejecting Claims 2-4. Applicant respectfully submits that it is logically inconsistent that one single element from one reference, i.e. topology database, teaches two different limitations from two different claims, i.e. flow parameter data and RLP data structure. Moreover, as a matter of law, the Examiner is obligated to choose an interpretation and apply it consistently to all claims. It is not permissible to arbitrarily change the interpretation of the reference from one claim to the next.

Furthermore, analogous to the discussion above, the topology database does not teach or suggest either a flow parameter database or and an RLP data structure to hold data indicating characteristics of the RPP.

Applicant directs the Examiner's attention to page 5 of the Office Action and notes the Examiner has referred to Claim 10 twice where both claims recite different language. Therefore, it appears that the Examiner meant to refer to one of Claim 10 as Claim 11 which recites "the apparatus of Claim 1, further comprising one of an OC-3 port and a DS-3 port."

Applicant respectfully submits that dependent claims Claims 7-11 depend from Claim 1 and at least for the reasons discussed above, reconsideration and withdrawal of the anticipation rejection of Claims 7-11 are respectfully requested.

With respect to Claim 12, the Examiner asserts using one single physical port, customers need the ability to "logically bundle" their network trunks teaches or suggests a remote logical port model to model remote physical port. However, Claim 12 does not contain this language. Rather, Claim 12 recites the network element modeling the plurality of physical ports and provide a two-tier hierarchy of shaping and scheduling of flows directed to the plurality physical ports link. Furthermore, the Examiner admits that Vuppala fails to teach or suggest this limitation and relies on Virtual Trunking. Similar to the discussion of Claim 1, the reference cited by the Examiner is found only on page 1, line 4 of Virtual Trunking, rather than on page 7, Fig. 6, lines 1-15 as indicated by the Examiner. Applicant submits that Virtual Trunking does not disclose all limitations of Applicant's Claim 12. Accordingly, reconsideration and withdrawal of the anticipation rejection of Claim 12 are respectfully requested.

With respect to Claim 14, according to the Examiner, <u>Virtual Trunking</u> on page 7, Fig. 6, lines 1-15 teaches or suggests <u>a plurality of data structures populated with data indicating characteristics of a remote physical port</u>. After careful review of the reference cited by the Examiner, Applicant respectfully submits that there is no evidence for at least <u>a plurality of data structures</u>. The cited reference refers to UNI Port Hierarchical Traffic Shaping and does not disclose any <u>data structure</u>. Applicant further submits that there is no connection between at least <u>a plurality of data structure</u> and traffic shaping.

In view of at least the absence in the references of <u>a plurality of data structures populated with data indicating characteristics of a remote physical port</u>, reconsideration and withdrawal of the anticipation rejection of Claim 14 are respectfully requested.

Dependent Claim 15 depends from Claim 12 and at least for the reasons discussed above, reconsideration and withdrawal of the anticipation rejection of Claim 15 are respectfully requested.

With respect to Claim 17, according to the Examiner, "using **one single physical port**, customers need the ability to 'logically bundle' their network trunks" teaches or suggests <u>a remote logical port model to model remote physical port</u>. Again, the reference cited by the Examiner is found on page 1, line 4 of <u>Virtual Trunking</u>, rather than on page 7, Fig. 6, lines 1-15. Applicant respectfully submits that Claim 17 does not have the language, "a remote logical port model to model remote physical port." Rather, Claim 17 recites <u>the modeling a plurality of remote physical ports as a plurality of remote logical ports,</u> however, the Examiner admits that <u>Vuppala</u> fails to teach or suggest this limitation. Applicant further submits that **one single physical port** is different from **a plurality of remote physical ports** and the need for the ability to "logically bundle" the network trunks is different from the modeling aspect of Claim 17.

Accordingly, the reference does not teach or suggest <u>modeling a plurality of remote physical ports as a plurality of remote logical ports</u> and in view of at least the absence in the references of this limitation, reconsideration and withdrawal of the anticipation rejection of Claim 17 are respectfully requested.

With respect to Claim 18, Applicant respectfully disagrees at least with respect to scheduling the shaped flow into a scheduled flow. The Examiner has directed Applicant's attention to Fig.1, page 643, col. 2, paragraph, and page 646, col. 2, paragraphs 2 and 3 from Vuppala. Applicant respectfully submits that in Fig. 1 there is no indication the reference teaches or suggests scheduling the shaped flow into a scheduled flow. As for page 643, column 2, paragraph 2, there is also no indication the reference teaches or suggests scheduling the shaped flow into a scheduled flow. The cited section refers to the control procedure responsible for transmitting the packets from higher layers or forwarding the incoming VNP packets. Clearly, transmitting is different from scheduling. Assuming arguendo, that the Examiner's incorrect characterization of the scheduling to be the control procedure that chooses a subset of its path set for forwarding the incoming packets is correct, there is no indication that the incoming packets are the shaped flow and that the scheduling directs the shaped flow into a scheduled flow. Lastly, as for page 646, col. 2, paragraphs 2 and 3, there is no indication that the packet scheduler schedules the shaped flow into a scheduled flow as claimed in Claim 18.

For the foregoing, withdrawal of the outstanding rejections as to all pending claims is respectfully requested.

II. Allowable Subject Matter

Applicant notes with appreciation the Examiner's indication that Claim 13 (indicated on the Office Action as Claim 12) and Claim 16 (indicated on the Office Action as Claim 15) contain allowable subject matter.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

Respectfully submitted,

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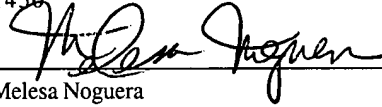
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I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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October 17, 2005